will be of great value. The searcher for certain materials of history will also have reason to welcome this convenient collection. They will not be disposed to carp at its failure to justify its pretentious title. The reviewer for a law journal may not with propriety dwell upon the extent to which the work is lacking in the essentials of historical composition. Happily the day is past when any person of legal training and a proclivity for the compilation of annals, statistics, forensic nomenclature, digests, documents, and explanatory notes can crowd them into a number of thick tomes and unchallenged call the product a constitutional *history*. We have a useful assortment of information about the constitutions of the colony and the State; but we still need a constitutional history of New York.

THE POWER TO REGULATE CORPORATIONS AND COMMERCE. BY FRANK HENDRICK. New York and London: G. P. Putnam's Sons, 1906. pp. lxxii, 516.

The author states that the object of his work is "to define the limits within which the governments of the several states and of the United States may secure freedom of trade by control of the persons and things engaged therein and to indicate the respective powers of the three departments of government in the exercise of such control." His main topic, however, as is indicated by his principal title, is the regulation and control of corporations. Such regulation and control, so far as can be gathered from his pages, he thinks should be exercised by the national government, through what he affirms to be its "common law" powers. But, when we come to examine his argument, we find that he often uses the phrase "common law" in a sense different from that in which it is generally understood. Indeed, in his preface, he observes that "the mooted question of the existence of a body of constitutional principles of such comprehensiveness as to be called the 'Common Law of the United States' is discussed exhaustively in this book for the first time, not only as a basis of remedy for the violation of rights guaranteed by the Constitution of the United States but also as a basis of jurisdiction for United States courts."

In this sentence, the author applies the phrase "common law" to a supposed "body of constitutional principles." In other places, he seems to ascribe to the national government the possession of common law powers in the fullest extent. Thus, on p. 216, he says:

"The courts of the United States may construe the Constitution only where the matter is capable of presenting a case in law or in equity, but those provisions of the Constitution which they may apply sum up the whole of the common law. And as the constitution of no State can change either the Constitution or the laws of the United States, and as the legislature of the State cannot change the common law of the State, the source of the common law being in the people and the law being wider than any State, there seems to be no legal basis for distinction between the common law of the State and the common law of the United States."

The passage just quoted, if the language is to be understood in any ense heretofore known, advances two novel propositions, namely, (1)

that the local legislatures cannot change the common law of the States, and (2) that the common law of the United States is the same as that of the States. As to the first of these propositions, it is necessary to observe that the State legislatures have been and still are constantly changing the common law. This is a matter of general notoriety. In the State of New York, in which the author's work is published, a penal code has been substituted for the common law of crime, codes of civil and criminal procedure have supplanted the common law system of pleading, and the original substantive law in many of the most important civil relations have been superseded by special statutes. As to the second proposition, it seems to be quite as unfounded as the first. So clearly is this so, that we are forced to conjecture that the author may have used the language which we have quoted, in some sense not explained by him and not readily grasped.

The reviewer is often confronted with a similar dilemma. For example, in discussing the power to create corporations, the author says: "The assumption of an implied power by States [to create corporations] does not deny the power to the United States. An implication of power for this purpose in the States would give force to a similar implication in the nation." Undoubtedly, we cannot lay it down that the concession of a certain power to the States necessarily involves the denial of it to the United States, but to say that the concession of it by implication to the States involves a similar concession of it to the United States is to set aside an elementary principle of constitutional construction. No lawyer denies that the United States is a government of enumerated powers, and that the national Congress consequently can exercise only such legislative power as is embraced in or can be implied from the powers so enumerated. The case of the States is precisely the reverse. Our State legislatures exercise all legislative power not forbidden to them by their respective constitutions or by the Constitution of the United States. One has only to compare the constitutional charter of Congress with that of a State legislature to see this fundamental distinction written on the face of the two instruments.

The apparent oversight thus noted is carried on into the subsequent argument. Thus, on p. 67, the author says:

"The right to create a corporation as a means to an object specified in the Constitution cannot be said to be a prohibition of the right, but rather an assertion of the capacity of the national government for the exercise of the means. And the exercise of a means without specific grant of the means is proof of the power of the government to exercise that means without express grant whether as a means or as a power."

Reduced to a simpler form, the author's proposition seems to be that the right to employ a means to a specified end implies the right to employ the means without regard to the end. In other words, once prove that a power exists incidentally, and the result follows that it can be exercised independently. This is a principle of construction so unusual that the author would have done well to characterize it as an innovation. If he had done so, the reader would have felt less uncertainty as to whether the words were intended to bear the meaning which they seem to convey. All along, however, the author apparently assumes that he is advancing

nothing inharmonious with the law as heretofore settled. At page 162, he declares, in italics, that "the requirement that every corporation file as a condition of corporate existence a certificate of incorporation with the Department of Corporations and Commerce at Washington and exercise its powers under the national common law of corporations whether expressed in a statutory declaration or not, would not necessitate the reversal of a single decision of any court, State or national, and would not change in the slightest degree the nature of really corporate existence in the United States, or necessitate a change of the laws of the States, compliance with which by a corporation is now a condition of doing business within the State." It is apparent, however, from what follows in the text, that he founds this declaration on an assumption which he describes as "the fallacy of State creation of corporations"—a very prevalent "fallacy" indeed. The fact may also be pointed out that there is no "Department of Corporations and Commerce" in Washington. There is a Department of Commerce and Labor, in which there is a bureau of corporations.

It is just to say that the author has made a very industrious examination of cases. He was, as his title-page informs us, first Ricardo prize fellow in Harvard University, and is the author of a volume on "Railway Control by Commissions." It is evident that he has made an earnest use of his time, and for this he is to be commended. What he should now cultivate above all else is lucidity. A writer on the law should first be sure that he has an intelligible and definite idea to communicate, and he should then strive to express it with the utmost clearness and simplicity. The passages heretofore quoted show much room for effort in that direction. They are not exceptional. On page 380, for instance, we are told that if Congress has made no "exceptions to and regulations of the appellate jurisdiction of the Supreme Court" of the United States, "then without statutes conferring jurisdiction, all cases in law and equity arising under the constitution and laws of the United States would be within the appellate jurisdiction conferred upon the Supreme Court by Congress." We may pertinently inquire how, if Congress has conferred an appellate jurisdiction, it can be said that we are "without statutes conferring" such jurisdiction? It is superfluous to remark that Congress can confer jurisdiction on the courts only by statute, and that if jurisdiction has been conferred by act of Congress a statute exists.

REVIEWS TO FOLLOW:

STUDIES IN THE CIVIL LAW. By W. W. Howe. Second Edition. Boston: Little, Brown & Co. 1905. pp. xiii, 391.

THE PRINCIPLES OF THE LAW OF CONTRACTS. By J. D. Lawson. Second Edition. St. Louis: The F. H. Thomas Law Book Co. 1905. pp. xxvi, 688.

WILLS ON CIRCUMSTANTIAL EVIDENCE WITH AMERICAN NOTES. By G. E. Beers and A. T. Corbin. Boston: The Boston Book Co. 1905. pp. xiii, 448.

A TREATISE ON EQUITABLE REMEDIES. By J. N. Pomeroy, Jr. Two